



**MEDIATION** If you want the AAA to contact the other party and attempt to arrange a mediation, please check this box.

TO: Name of Respondent *see additional respondents Daniel J. Moloney on Schedule A attached			Name of Representative (if known)		
Address 229 E. 120th Street			Address		
City New York	State NY	Zip Code 10035	City	State	Zip Code
Phone No. 212-410-3500	Fax No.		Phone No.	Fax No.	

THE NAMED CLAIMANT, A PARTY TO A WRITTEN AGREEMENT DATED 9/25/03 PROVIDING FOR ARBITRATION UNDER THE CONSTRUCTION INDUSTRY ARBITRATION RULES, HEREBY DEMANDS ARBITRATION THEREUNDER. (ATTACH THE ARBITRATION CLAUSE.)

**NATURE OF DISPUTE** (Please give enough details to enable the AAA to select arbitrators with appropriate experience.):  
 Failure to pay for work, labor, services, material and equipment furnished in connection w the private improvement known as the Manhattan Storage Project located on East 120th and 121st Streets in New York, NY.

DOLLAR AMOUNT OF CLAIM: \$ 650,000.00	OTHER RELIEF SOUGHT: Interest, arbitration costs, and attorney's fees
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PLEASE DESCRIBE APPROPRIATE QUALIFICATIONS FOR ARBITRATOR(S) TO BE APPOINTED TO HEAR THIS DISPUTE:

Familiarity with construction and general contracting.

**CLAIMANT IS:**

Owner  Design Professional (specify \_\_\_\_\_)  Contractor  
 Subcontractor (specify \_\_\_\_\_)  Other (specify \_\_\_\_\_)

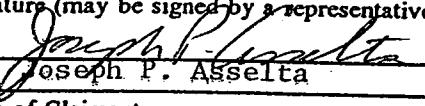
**RESPONDENT IS:**

Owner  Design Professional (specify \_\_\_\_\_)  Contractor  
 Subcontractor (specify \_\_\_\_\_)  Other (specify \_\_\_\_\_) Lessee

ESTIMATED TIME NEEDED FOR HEARINGS OVERALL: \_\_\_\_\_ hours 4-5 days

Copies of this demand are being filed with the American Arbitration Association at its East Providence, RI off. Claimant requests that the AAA commence the administration of the arbitration. Under the rules, you may file an answering statement within ten days after notice from the AAA.

CLAIMANT REQUESTS THAT ARBITRATION HEARINGS BE HELD AT THE FOLLOWING LOCALE:  
 New York, NY

Signature (may be signed by a representative)  Joseph P. Asselta	Title Attorney	Date 3/2/05
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Name of Claimant Shamrock Building Systems, Inc.	Name of Representative Agovino & Asselta, LLP
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Address 5825 Gore Place	Address 170 Old Country Road, Suite 608
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City Austell	State GA	Zip Code 30106	City Mineola	State NY	Zip Code 11501
Phone No. 770-745-4822	Fax No. 770-745-4820		Phone No. 516-248-9880	Fax No. 516-248-9879	

TO INSTITUTE PROCEEDINGS, PLEASE SEND THREE COPIES OF THIS DEMAND AND THE ARBITRATION AGREEMENT, WITH THE FILING FEE, AS PROVIDED FOR IN THE RULES, TO THE AAA. SEND THE ORIGINAL DEMAND TO THE RESPONDENT.

SEE ATTACHED RIDER

RIDER

UNLESS RESPONDENT APPLIES TO STAY THE ARBITRATION WITHIN TWENTY (20) DAYS AFTER SUCH SERVICE, HE SHALL THEREAFTER BE PRECLUDED FROM OBJECTING THAT A VALID AGREEMENT WAS NOT MADE OR HAS NOT BEEN COMPLIED WITH AND FROM ASSERTING IN COURT THE BAR OF A LIMITATION OF TIME.

**9.10.2** If a claim, dispute or other matter in question relates to or is the subject of a mechanic's lien, the party asserting such matter may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by the Architect, by mediation or by arbitration.

**9.10.3** The parties shall endeavor to resolve their disputes by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Request for mediation shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. The request may be made concurrently with the filing of a demand for arbitration but, in such event, mediation shall proceed in advance of arbitration or legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

*This Document includes abbreviated General Conditions and should not be used with other general conditions.*

**THIS DOCUMENT HAS IMPORTANT LEGAL CONSEQUENCES. CONSULTATION WITH AN ATTORNEY IS ENCOURAGED WITH RESPECT TO ITS COMPLETION OR MODIFICATION. AUTHENTICATION OF THIS ELECTRONICALLY DRAFTED AIA DOCUMENT MAY BE MADE BY USING AIA DOCUMENT D401.**

*This document has been approved and endorsed by The Associated General Contractors of America.*

**9.10.4** Claims, disputes and other matters in question arising out of or relating to the Contract that are not resolved by mediation, except matters relating to aesthetic effect and except those waived as provided for in Paragraph 9.11 and Subparagraphs 14.5.3 and 14.5.4, shall be decided by arbitration which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect. The demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association and shall be made within a reasonable time after the dispute has arisen. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. Except by written consent of the person or entity sought to be joined, no arbitration arising out of or relating to the Contract Documents shall include, by consolidation, joinder or in any other manner, any person or entity not a party to the Agreement under which such arbitration arises, unless it is shown at the time the demand for arbitration is filed that (1) such person or entity is substantially involved in a common question of fact or law, (2) the presence of such person or entity is required if complete relief is to be accorded in the arbitration, (3) the interest or responsibility of such person or entity in the matter is not insubstantial, and (4) such person or entity is not the Architect or any of the Architect's employees or consultants. The agreement herein among the parties to the Agreement and any other written agreement to arbitrate referred to herein shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

## **9.11 CLAIMS FOR CONSEQUENTIAL DAMAGES**

The Contractor and Owner waive claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes:

- .1** damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2** damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.



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This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 19. Nothing contained in this Paragraph 9.11 shall be deemed to preclude an award of liquidated direct damages, when applicable, in accordance with the requirements of the Contract Documents.

**AIA DOCUMENT A107 - 1997  
ABBREVIATED OWNER -  
CONTRACTOR AGREEMENT**

The American Institute of Architects  
1735 New York Avenue N.W.  
Washington, D.C. 20006-5292

## **ARTICLE 10 SUBCONTRACTORS**

**10.1** A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site.

**& ASSELTA, LLP**  
COUNTRY ROAD, SUITE 608  
LA, NEW YORK 11501

Case 1:07-cv-03706-LBS

Document 7

Filed 05/10/2007

Page 5 of 6



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IO & ASSELTA, LLP  
COUNTRY ROAD, SUITE 608  
EOLA, NEW YORK 11501

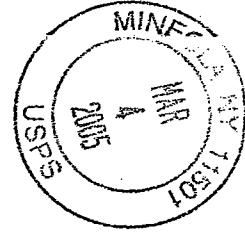
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& ASSELTA, LLP  
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Daniel J. Moloney  
229 E. 120th Street  
New York, NY 10035

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